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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

TRUSTEES OF THE OPERATING
ENGINEERS PENSION TRUST;
TRUSTEES OF THE OPERATING
ENGINEERS HEALTH AND WELFARE
FUND; TRUSTEES OF THE OPERATING
ENGINEERS JOURNEYMAN AND
APPRENTICE TRAINING TRUST; and
TRUSTEES OF THE OPERATING
ENGINEERS VACATION-HOLIDAY
SAVINGS TRUST,

Plaintiffs,

vs.

NORTHWESTERN AIR SERVICES, LLC, a
Colorado limited liability company,

Defendant.

CASE NO.:

COMPLAINT

[29 U.S.C. §§ 185(a), 1132(e), and 1145]

Plaintiffs, TRUSTEES OF THE OPERATING ENGINEERS PENSION TRUST, TRUSTEES OF THE OPERATING ENGINEERS HEALTH AND WELFARE FUND, TRUSTEES OF THE OPERATING ENGINEERS JOURNEYMAN AND APPRENTICE TRAINING TRUST, and TRUSTEES OF THE OPERATING ENGINEERS VACATION-HOLIDAY SAVINGS TRUST, complain and allege as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this case pursuant to Section 502(e)(1) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. § 1132(e)(1), which grants the United States District Courts jurisdiction over civil actions brought by a fiduciary pursuant

1 to Section 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(3), to redress violations or enforce the terms of
2 ERISA or an employee benefit plan governed by ERISA. Such jurisdiction exists without respect to
3 the amount in controversy or the citizenship of the parties, as provided in Section 502(f) of ERISA, 29
4 U.S.C. § 1132(f).

5 2. Venue is proper in this Court pursuant to Section 502(e)(2) of ERISA, 29 U.S.C. §
6 1132(e)(2), and Section 301(a) of the Labor Management Relations Act, 29 U.S.C. § 185(a), because
7 this is the district in which the Plaintiff Trusts (defined below) are administered, the signatory union
8 maintains union offices, and where the contractual obligation is to be paid.

9 3. To the extent this Complaint sets forth any state law claims, this Court has supplemental
10 jurisdiction over those claims pursuant to 28 U.S.C. § 1367(a).

11 **PARTIES**

12 4. Plaintiffs are the TRUSTEES OF THE OPERATING ENGINEERS PENSION TRUST;
13 TRUSTEES OF THE OPERATING ENGINEERS HEALTH AND WELFARE FUND; TRUSTEES
14 OF THE OPERATING ENGINEERS JOURNEYMAN AND APPRENTICE TRAINING TRUST;
15 AND TRUSTEES OF THE OPERATING ENGINEERS VACATION-HOLIDAY SAVINGS TRUST
16 (hereinafter collectively “Plaintiffs” or “Trusts”). Plaintiffs are Trustees of express trusts created
17 pursuant to written declarations of trust (hereinafter “Trust Agreements”) between the International
18 Union of Operating Engineers, Local Union No. 12, (hereinafter “Local 12”) and various employer
19 associations in the construction industry in Southern California and Southern Nevada. The Trusts
20 were created and now exist pursuant to Section 302(c) of the LMRA, as amended 29 U.S.C. § 186(c).

21 5. At all times material herein, Local 12 has been a labor organization representing employees
22 in the building and construction trades in Southern California and Southern Nevada, and a labor
23 organization representing employees in an industry affecting commerce within the meaning of
24 Section 301(a) of the LMRA, as amended 29 U.S.C. § 185(a).

25 6. Plaintiffs, as Trustees of the Trusts, are “fiduciar[ies]” with respect to the Trusts as defined
26 in Section 3(21)(A) of ERISA, 29 U.S.C. § 1002(21)(A).

27 7. At all times material herein, Defendant, NORTHWESTERN AIR SERVICES, LLC
28 (hereinafter “NAS”) has been a foreign limited liability company organized and existing by virtue of

1 the laws of the State of Colorado, with its principal place of business located in Grand Junction,
2 Colorado.

3 **GENERAL ALLEGATIONS**

4 8. NAS is signatory to a Project Labor Agreement (“PLA”), which required NAS to make
5 fringe benefit contributions for each covered hour worked by its employees under those PLAs.

6 9. Pursuant to the PLA, NAS is required to comply with the Master Labor Agreement for
7 Southern Nevada (hereinafter “MLA”), which was negotiated between Local 12 and various
8 multiemployer associations in Southern Nevada. The MLA also requires NAS to make fringe benefit
9 contributions for each hour of covered work performed by or paid to any of its employees performing
10 covered work under the MLA.

11 10. As signatory to the PLA, NAS is also bound to the terms and conditions of the Trust
12 Agreements, under which the Plaintiff Trusts were created and currently operate.

13 11. NAS is an “employer,” as that term is defined in the MLA, PLAs and applicable Trust
14 Agreements.

15 12. NAS is also an “employer” as defined and used in Section 3(5) of ERISA, 29 U.S.C. §
16 1002(5), and therefore, NAS is “obligated to make contributions to a multi-employer plan” within the
17 meaning of Section 515 of ERISA, 29 U.S.C. § 1145. Plaintiffs are informed and believe and thereon
18 allege that NAS is also an “employer” engaged in “commerce” in an “industry affecting commerce,”
19 as those terms are defined and used in Sections 501(1) and 501(3) of the LMRA, as amended 29
20 U.S.C. § 142(1)-(3), and within the meaning and use of Section 301(a) of the LMRA, 29 U.S.C. §
21 185(a).

22 **FIRST CLAIM FOR RELIEF**

23 **(Breach of written Project Labor Agreement, Master Labor Agreement and
related Trust Agreements)**

24 13. Plaintiffs hereby incorporate by reference all prior paragraphs of this Complaint,
25 inclusive of any and all subparagraphs, to the same effect as if set forth verbatim.

26 14. Under the PLA, MLA, and Trust Agreements, at all times material herein, NAS was
27 obligated to submit written reports to the Trusts on a timely basis showing the identity of its
28 employees performing any work covered by the PLAs or MLA and the number of hours worked by or

1 paid to those employees. Further, NAS promised it would pay fringe benefit contributions to the
 2 Trusts on a monthly basis and at specified rates for each hour worked by or paid to any of its
 3 employees performing any work covered under the Agreements. These amounts are due and payable
 4 at the Trusts' administrative offices, which are located in Pasadena, California.

5 15. NAS is required by the Trust Agreements, Federal law, and Ninth Circuit precedent to
 6 maintain adequate records of, among other things, the hours of work performed by its employees and
 7 the amounts paid to its employees. The PLA, MLA, and Trust Agreements, which were all signed and
 8 acknowledged by NAS, require NAS to submit to audits of its payroll and related records. The
 9 purpose of an audit is to determine if fringe benefit contributions have been properly paid pursuant to
 10 the PLAs, MLA and Trust Agreements.

11 16. NAS failed to submit timely reports to the Trusts for the months of October, 2015
 12 through December, 2015. NAS also failed to timely pay these reports.

13 17. The Trusts' counsel demanded NAS pay all of the amounts owed. After stating it would
 14 pay the amounts owed, NAS submitted an initial payment in the amount of \$14,069.11 on or about
 15 November 8, 2016. NAS submitted no further payments.

16 18. As a result of NAS' failure to submit and pay reports, NAS owes the following amounts
 17 to the Trusts:

| | |
|------------------------------|----------------------|
| Contributions | \$ 41,906.85 |
| Liquidated Damages | \$ 4,190.69 |
| Interest | <u>\$ 3,466.85</u> |
| Total: | \$ 49,564.38 |
| <i>Payment made 11/8/16:</i> | <i>\$ -14,069.11</i> |
| TOTAL DUE: | \$ 35,495.27 |

19 19. It has been necessary for the Trusts to engage the law firm of Laquer, Urban, Clifford
 20 & Hodge LLP, for the purpose of collecting the amounts due. Pursuant to the PLA, MLA, Trust
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1 Agreements, and 29 U.S.C. § 1132(g)(2), the Trusts are entitled to their reasonable attorneys' fees and
2 costs of suit.

3 20. Pursuant to 29 U.S.C. § 1132(g)(2), NAS owes prejudgment interest to the Trusts at the
4 rates established pursuant to 26 U.S.C. § 6621. Interest is due on all unpaid contributions from the
5 dates the sums were originally due to the Trusts until the date of judgment. The amount of interest
6 will be established by proof at trial or in support of a dispositive motion.

7 **SECOND CLAIM FOR RELIEF**
8 **(Violation of 29 U.S.C. § 1145 – NAS)**

9 21. Plaintiffs hereby incorporate by reference all prior paragraphs of this Complaint,
10 inclusive of any and all subparagraphs, to the same effect as if set forth verbatim.

11 22. Section 515 of ERISA, 29 U.S.C. § 1145, provides:

12 Every employer who is obligated to make contributions to a multiemployer plan under the
13 terms of the plan or under the terms of a collectively bargained agreement shall, to the extent
14 not inconsistent with law, make such contributions in accordance with the terms and conditions
15 of such plan or such agreement.

16 23. All conditions, covenants and promises on their part that are or were required to be
17 performed as conditions precedent for NAS's performance under 29 U.S.C. § 1145 have been properly
18 performed.

19 24. On NAS's PLA project, NAS violated its statutorily mandated obligation to report and
20 remit the proper amount of fringe benefit contributions to the Plaintiffs.

21 25. There is no legal excuse for NAS's violation of 29 U.S.C. § 1145.

22 26. Pursuant to 29 U.S.C. § 1132(g)(2), in any action by a fiduciary in which judgment is
23 found in favor of the plan under 29 U.S.C. § 1145, the court shall award the plan:

- 24 i) the unpaid contributions,
- 25 ii) interest on the unpaid contributions,
- 26 iii) an amount equal to the greater of
 - 27 a) interest on the unpaid contributions; or
 - 28 b) liquidated damages provided for under the plan in an amount not in
excess of 20% (or such higher percentage as may be permitted under

1 federal or state law) of the amount determined by the court to be
2 unpaid contributions,

3 iv) reasonable attorneys' fees and costs, and

4 v) such other legal or equitable relief as the Court deems appropriate.

5 34. For purposes of 29 U.S.C. § 1132(g)(2), interest on unpaid contributions shall be
6 determined by using the rate provided under the plan or, if none, the rate prescribed under § 6621 of
7 the Internal Revenue Code of 1986, as amended, 26 U.S.C. § 6621.

8 27. Pursuant to 29 U.S.C. § 1132(g)(2) and the Trust Agreements, NAS owes interest to the
9 Trusts, at the rates established pursuant to 26 U.S.C. § 6621, on all unpaid contributions from the dates
10 the sums were originally due to the Trusts to the date of judgment. The amount of said interest will be
11 established by proof at trial.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Northwestern Air Services, LLC, as follows:

1. For unpaid fringe benefit contributions in amounts as proven;
2. For damages for breach of contract in amounts as proven;
3. For liquidated damages in amounts as proven;
4. For interest at the rates established by 26 U.S.C. § 6621 on all fringe benefit contributions and damages until paid in full;
5. For Plaintiffs' reasonable attorneys' fees;
6. For Plaintiffs' costs of suit incurred herein;
7. For such additional relief as this Court deems just and proper.

Dated: January 13, 2017

LAQUER, URBAN, CLIFFORD & HODGE LLP

/s/ Nathan R. Ring

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